

<b>COMPLIANCE BOARD OPINION NO. 99-10</b>
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July 14, 1999

*Mr. Ira P. Kauffman, Jr.*

The Open Meetings Compliance Board has considered your complaint that the Mayor and City Council of Hagerstown violated the Maryland Open Meetings Act by conducting four meetings involving budget discussions in closed session. For the reasons stated below, the Compliance Board finds that the Act was not violated.

**I**

**Complaint and Response**

Citing information from the City Clerk, you asserted that the Council held “four budget meetings closed to the public .... [D]uring these closed meetings council members had agreed to \$775,000 in budget cuts. According to newspaper accounts, [one council member] was quoted as stating that ‘we the Mayor and Council need to have these personnel-related issues in executive sessions so that we can discuss freely all sensitive issues that need to be discussed.’”

In a timely response on behalf of the Council, Mark K. Boyer, Esquire, acknowledged that the Council had held a total of six meetings in closed session concerning, as Mr. Boyer put it, “preliminary budgetary matters and related personnel issues.”<sup>1</sup> Mr. Boyer explained the background and purpose of these meetings as follows:

In the wake of a significant budget shortfall for the 1999-2000 fiscal year, the City Administrator and key staff personnel sought general direction from the Mayor and Council on how they would like these budget matters to be addressed. During these closed meetings various proposals were put forth by the staff, including revenue increases, budgetary cuts, and most prominently,

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<sup>1</sup> Mr. Boyer’s letter was also signed by the City Administrator and City Clerk, to vouch for the factual assertions contained in it.

reductions in staffing within city government. The Mayor and Council, City Administrator and staff discussed the feasibility of pursuing any of a number of courses to balance the city's upcoming budget.

The Council's position is that these "preliminary" budget discussions were excluded from the Open Meetings Act by the "executive function" exclusion.<sup>2</sup>

## II

### Analysis

The first step in any analysis of the Open Meetings Act is to consider whether the Act applies to the meeting in question. There are three criteria for the Act's applicability: that the entity is a "public body"; that it is holding a "meeting; and that the subject matter of the meeting is within the Act, rather than excluded from it.

Here, there is no question that the Council is a "public body" and was holding a series of "meetings." See §10-502(g) and (h) of the State Government Article. Hence, the determinative question about the application of the Act is whether the closed meetings of the Council concerned matters that are within the scope of the Act. If so, the Act's substantive and procedural requirements applied; if not, none of the requirements applied.

With exceptions not relevant here, the Open Meetings Act "does not apply to ... a public body when it is carrying out ... an executive function." §10-503(a)(1)(i). The term "executive function" is in part defined by what it is not: a discussion of an advisory, judicial, legislative, quasi-judicial, or quasi-legislative function is not an executive function. §10-502(d)(2). If a discussion is not encompassed by any of these other defined functions *and* involves "the administration of" existing law, including "a law of a political subdivision of the State," it falls within the executive function. §10-502(d)(1)(ii).

We turn, then, to existing law – namely, the relationship between the Council and the City Administrator under the Charter of the City of Hagerstown. Under §701a of the Charter, the City Administrator has the duty to "[p]repare and submit an annual budget and capital improvement program to the Council." The City Administrator also has the duty to "[m]ake

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<sup>2</sup> Following these discussions, the City Administrator submitted a budget to the Mayor and Council. The budget was then discussed in several open sessions and was the subject of a public hearing.

... reports as the Council may require concerning the operation of city departments, offices and agencies” and to “[k]eep the Council fully advised to the financial condition and future needs of the city....” §602g and h.

It is evident to the Compliance Board that, when the Council met with the City Administrator to consider options in the formulation of the next fiscal year’s budget, it was carrying out its authority under these provisions of the City Charter. To be sure, the process by which the Council considers the budget, *after* it has been submitted by the City Administrator, is a “quasi-legislative function” that generally must be carried out in open session. §10-502(j). Nevertheless, given the role of the Council under the Charter of Hagerstown, its discussions with the City Administrator during the budget preparation phase are best viewed as an executive function not subject to the Act.

The Maryland Court of Appeals recognized the distinction between the budget formulation and budget consideration phases in a commissioner county, *Board of County Commissioners v. Landmark Community Newspapers*, 293 Md. 595, 605, 446 A.2d 63 (1982), and we applied the distinction to a town council in an opinion last year. In Compliance Board Opinion No. 98-7 (September 11, 1998), we concluded that “[t]he process by which the Ocean City Council prepares compensation and benefit plans through discussion with the City Manager parallels the budget preparation process in a commissioner county” and fell within the executive function exclusion. So, too, did the budget preparation discussions between the Hagerstown City Council and the City Administrator.

### **III**

#### **Conclusion**

Because the Open Meetings Act did not apply to the budget discussions in question, the Compliance Board finds that the Hagerstown City Council did not violate the Act by holding these meetings in closed session.

OPEN MEETINGS COMPLIANCE BOARD

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